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principal case is in former Kentucky decisions. *Hobson v. Hobson Exrs.*, 8 Bush, 665; *Lane v. Bank*, 21 S. W. 756; *Tipton v. Trader's Bank*, 33 S. W. 205; *New Farmer's Bank v. Blythe*, 53 S. W. 409.

The principle of these cases is not apparent. To bind the wife's separate estate absolutely, when her express intention was to become only a surety, and to deprive her of the benefits of the laws relating to the discharge of a surety, is manifestly a restriction incident to coverture not contemplated by the various Married Women's Property Acts. If she is not a surety, the question naturally arises: In what relation does she stand? And to this question the Kentucky cases afford no satisfactory answer. In *Tipton v. Bank*, *supra*, the court attempts to define her position in the following words: "Her property is a security or pledge for the payment of her husband's debts yet she is not the surety of her husband." Upon whatever distinction there is in this explanation, the Kentucky court bases its decision. Opposed to it are the text writers and all other state courts that have passed upon the question. BRANDT, *SURETYSHIP AND GUARANTY*, 35; JONES, *MORTGAGES*, 114; AM. & ENG. ENC. LAW, p 720; 20 CENT. LAW JOURNAL, 205.

As there is no peculiar statutory provision in Kentucky relating to this question, it is difficult to account for the position of the Kentucky court, standing as it does, alone in its holding.

**TAXATION—GOOD WILL OF A PARTNERSHIP.**—The Indiana constitution required that the legislature should provide for a uniform and equal rate of taxation on all property not expressly exempted by law. Defendant partnership published a newspaper, and one item of its assessment was for the good will. *Held*, that the good will was not taxable in this case. *Hart v. Smith* (1902), — Ind. —, 64 N. E. Rep. 661.

The court held that the good will was not, in and of itself, property within the meaning of the constitutional mandate, and while it might be taxed since the law protected it, yet *a priori* it was not included within the meaning of the constitutional provision, nor was it property in such a sense that the legislative act must be held to have intended to include it, in the absence of express words to that effect. Further, it was not mentioned in the enumeration of the kinds of personal property in the legislative provision, and the maxim, "*Expressio unius est exclusio alterius*," applies.

This would seem the first case where this precise point has been raised. That good will is an asset, has value, and is salable, is abundantly supported by the authorities. *Biningen v. Clark*, 60 Barb. 113; *Snyder Manufacturing Co. v. Snyder*, 54 Ohio St. 86, 43 N. E. Rep. 325; *Wallingford, Shamp & Co. v. Burr*, 17 Neb. 137; *Barber v. Conn. Mut. Life Ins. Co.* 15 Fed. Rep. 312. (See note on last case for entire subject of good will.) Franchises, equally intangible, are taxed. 25 AMER. AND ENG. ENCY. OF LAW, 631. By analogy it would seem that good will is taxable also. Indeed, this is admitted by a dictum in the case.

**TRIAL—EXPRESSION BY JUDGE OF HIS OPINION AS TO THE FACTS.**—The code of North Carolina forbids a judge, in charging the jury, to express "an opinion whether a fact is fully or sufficiently proven." On the trial of an action against a telegraph company to recover damages for alleged negligence in delivering a message, there was some claim that the messenger boy had not done his duty. The court instructed the jury "that it was the duty of the telegraph company to use reasonable diligence in the transmission of all messages committed to it, and that by the term 'reasonable' or 'due' diligence was not meant the speed of lightning (except in the transmission of the message over the wire) on the one hand, nor the proverbial slowness of the

messenger boy on the other." The latter remark was excepted to. *Held*, error justifying a new trial. *Meadows v. Western Union Tel. Co.* (1902), — N. Car. —, 42 S. E. Rep. 535.

The ground for the conclusion was that, under the circumstances, this language of the judge "was likely to convey to the jury his opinion of the weight of the evidence."

**TRUSTS—DEPOSITS IN AN INSOLVENT BANK—RIGHT TO FOLLOW AS A TRUST FUND.**—A bank received public funds from the plaintiff, its officers knowing at the time that it was insolvent. A statute provided that public funds, deposited with banks, under such circumstances should be held as trust funds. The deposit had been mingled with other moneys of the bank, and could be traced to no particular property in the hands of the defendant, the receiver. In a suit to establish a trust, *Held*, that the assets in the hands of the receiver were impressed with a trust. *Fogg v. Hebdon* (1902), — Miss. —, 32 So. Rep. 285.

The decision is in accord with the "modern doctrine" of equity, and with the weight of authority. *Knatchbull v. Hallett* (1879), L. Rep. 13 Ch. D. 696, 41 Law T. R. N. S. 186, 48 Law J. R. 734, Ch.; *National Bank v. Insurance Co.* (1881), 104 U. S. 54, 26 L. ed. 693. Some American courts still adhere to the old rule that money has no ear marks, and that its identity is lost by a mingling. *Portland, etc., Steamship Co. v. Locke* (1882), 73 Me. 370; *Bayor v. American, etc., Bank* (1895), 157 Ill. 62. 41 N. E. 622. But the money must be traced to the mass sought to be charged. *Englar v. Offutt* (1889), 70 Md. 78, 14 Am. St. R. 332, 16 Atl. Rep. 497; *Sherwood v. Milford Bank* (1892), 94 Mich. 78, 53 N. W. 923.

In a case similar to the principal case, however, it was held that funds must not only be traced to the assets, but must also be shown to remain there. *Shields v. Thomas* (1893), 71 Miss. 260, 14 So. Rep. 84, 42 Am. St. R. 458. But the principal case holds that in the absence of evidence to the contrary, the bank will be presumed to have acted in good faith, to have made payments out of its own funds, and that the trust funds are represented in the remaining assets. *Knatchbull v. Hallett, supra*. Independent of the statute, the bank's fraud made it a trustee in the principal case. *Craigie v. Hadley* (1885), 99 N. Y. 131, 1 N. E. 537, 52 Am. R. 9.

**TRUSTS—RULE AGAINST PERPETUITIES.**—A testator provided for an accumulation of his estate in the hands of trustees for the gross period of thirty years, without any reference to any life or lives in being, in a state wherein the common law limitation to a life or lives in being, and twenty-one years and nine months thereafter prevailed. *Held*, void as creating an unlawful perpetuity. *Andrews v. Lincoln* (1901), 95 Me. 541, 50 Atl. 898, 56 L.R.A. 103.

"Whenevir lives in being," said the court, "do not form part of the time of suspension or postponement, the only period under the rule against perpetuities is a twenty-one year absolute. *Kimball v. Crocker*, 53 Me. 263."

**WILLS—REVOCATION BY BIRTH—WHAT IS PROVISION FOR.**—A testator having children at the date of his will gave his property to his wife in fee stating that he knows "that she will take every care of our children, and do what is just and right by each of them." After this a child was born: *Held* that the birth of the child revoked the will, there being therein no provision "made in contemplation of such event," within the meaning of Code § 3347. *Sutton v. Hancock* (1902), — Ga. —, 42 S. E. Rep. 214.

In Ohio, under a statute declaring that an after-born child not provided for in the will shall take as in case of intestacy, it was held that the after-born